

STATE OF MICHIGAN
COURT OF APPEALS

DEBBIE HOUTHOOFD,

Plaintiff-Appellant,

v

SCOTT C. CHAPMAN, JR. and RICHELLE L.
CHAPMAN,

Defendants-Appellees.

UNPUBLISHED
February 13, 2014

No. 313039
Arenac Circuit Court
LC No. 12-011819-NI

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition in this no-fault action. We affirm.

On July 5, 2011, plaintiff was a passenger in a vehicle that was struck in the front by a vehicle being operated by defendant Scott Chapman. Thereafter, plaintiff brought this negligence action alleging that she sustained serious injuries from the collision.

Subsequently, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that there was no factual dispute that plaintiff did not sustain a serious impairment of body function as required by MCL 500.3135; thus, defendants were entitled to judgment as a matter of law. See *McCormick v Carrier*, 487 Mich 180, 190; 795 NW2d 517 (2010). Defendants argued that the collision was a "minor fender-bender" resulting from defendant Scott Chapman backing up his vehicle approximately five feet into the pick-up truck occupied by plaintiff while they were waiting in line to purchase gas. Defendants further argued that plaintiff had an extensive history of pre-existing medical problems involving several parts of her body, including her knees, low back, neck, and right shoulder. Plaintiff had also been receiving Social Security disability benefits since 2002 for knee and low back problems, and her physical abilities were severely limited as a consequence of her numerous medical problems. Defendants argued that plaintiff's claimed injuries, including tremors or involuntary movements of her right hand, were not caused by or exacerbated by the minor collision. Defendants further argued that plaintiff was evaluated by a neurologist, Dr. Iftikhar Khan, with regard to her alleged right hand tremor and his opinion was that plaintiff's tremor was a "nonorganic, nonphysiologic, and psychogenic problem," and not a neurological disorder related to the collision. Plaintiff was also evaluated by a second neurologist, Dr. Wilbur Boike, who opined that her right upper

extremity “tremor” was “clearly nonphysiologic” and there was no objective evidence of neurological or spinal impairment that could be attributed to the collision. Accordingly, defendants argued that plaintiff could not demonstrate an objectively manifested impairment of an important body function resulting from the collision; thus, her claims must be dismissed.

Plaintiff responded to defendants’ motion for summary disposition, arguing that she suffered from uncontrolled hand tremors since the collision which interfered with her ability to use her right hand. Plaintiff argued that there was, at least, a question of fact as to whether she suffered an objectively manifested impairment of an important body function as required by MCL 500.3135(7) and *McCormick*, 487 Mich at 190. Prior to the collision, plaintiff was not experiencing problems with her hand and she was generally able to lead her normal life. Further, although she had prior physical problems, MCL 500.3135 did not preclude a claim based on the aggravation of preexisting injuries. See *Wilkinson v Lee*, 463 Mich 388, 395-397; 617 NW2d 305 (2000). Therefore, plaintiff argued, a genuine issue of material fact existed on the issue whether she suffered an objectively manifested impairment of an important body function that affected her general ability to lead her normal life as a consequence of the collision and defendants’ motion for summary disposition should be denied.

Following oral arguments, the trial court granted defendants’ motion for summary disposition, holding that “[t]here is no objective evidence of injuries from this accident causing a serious impairment of bodily function.” This appeal followed.

Plaintiff argues that she presented sufficient evidence to establish that she suffers from uncontrolled hand tremors since the collision; thus, a genuine issue of material fact existed as to whether she suffered an objectively manifested impairment of an important body function which precluded summary disposition. We disagree.

A trial court’s decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). When deciding a motion pursuant to MCR 2.116(C)(10), the reviewing court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party, and all reasonable inferences are to be drawn in favor of the nonmovant. *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012); *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010).

Under the no-fault insurance act, MCL 500.3101 *et seq.*, tort liability for noneconomic losses is generally limited to instances in which the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(1); *McCormick*, 487 Mich at 189-190. A serious impairment of body function is an objectively manifested impairment of an important body function that affects the person’s general ability to lead his normal life. MCL 500.3135(7); *McCormick*, 487 Mich at 190. Quoting MCL 500.3135(2)(a), the *McCormick* Court held that a court may determine as a question of law whether a serious impairment of body function has been suffered if there “is no factual dispute regarding ‘the nature and extent of the person’s injuries’ that is material to determining whether the threshold standards are met.” *McCormick*, 487 Mich at 193-194. However, the Court held, “[i]f there is a material factual dispute regarding the nature and extent of the person’s injuries, the court should not decide the issue as a matter of law.” *Id.* at 194.

Plaintiff argues that the nature and extent of her injuries “are highly disputed and are undeniably material.” The primary injury that plaintiff claims arose from the collision is “uncontrolled hand tremors.” However, in support of their argument that plaintiff did not sustain a serious impairment of body function from the collision, defendants provided written evaluations from two neurologists which concluded that plaintiff’s alleged hand tremors were clearly “nonphysiologic” and did not arise from a neurological disorder that could be attributed to the collision. Pursuant to MCR 2.116(G)(4), as the opposing party, plaintiff was required to respond to the motion with evidentiary materials that showed the existence of a genuine issue of material fact. Plaintiff presented no evidence in support of her claim that her alleged hand tremors arose as a consequence of the collision. The medical records indicated that plaintiff’s physicians were unable to determine the origin of the tremor. At the hearing on defendants’ motion, plaintiff’s counsel admitted that no testing had identified the cause of the tremor or determined whether it was voluntary or involuntary. Accordingly, plaintiff failed to meet her burden of establishing the existence of a genuine issue of material fact upon which reasonable minds could differ regarding the issue whether she suffered a serious impairment of body function from the collision. Thus, the trial court properly determined as a matter of law that plaintiff did not suffer a serious impairment of body function entitling her to relief. Accordingly, we affirm the trial court order granting defendants’ motion for summary disposition.

Affirmed.

/s/ Mark T. Boonstra

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald